HON'BLE MR JUSTICE A. GOPAL REDDY

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WRIT PETITION NO.13185 OF 1994

DATE:07.02.2006

Between:

Eti Ammannamma (died), rep. by her GPA

Holder S. Pardha Saradhi.

..... PETITIONER

AND

The Commissioner of Survey Settlements

And Land Records, A.P., Hyderabad

and another.

.....RESPONDENTS

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HON'BLE MR JUSTICE A. GOPAL REDDY

W.P. No.13185 OF 1994

ORDER:

Petitioner invoked the Certiorari jurisdiction of this Court to call for the records pertaining to CSS&LR-P.1/812/88, dated 29.12.1993/4-3-1994 on the file of the first respondent and to quash the same.

The facts that are necessary for disposal of this writ petition are that on the report of the second respondent-District Collector, Visakhapatnam, dated 22.5.1988 the first respondent-Commissioner of Survey Settlements and Land Records exercised the suo moto powers and conducted enquiry from which it is clear that the petitioner filed a suit in O.S.No.19 of 1986 on the file of Principal Senior Civil Judge, Visakhapatnam claiming ownership over the two pieces of land in R.S.No.89/7 and 90/2 of Mindi village on the basis of the order of the Settlement Officer, Visakapatnam in S.R.No.11(a)/4/69/4, dated 30.4.1970 and the order of Director of Settlements, Hyderabad in R.P.No.183/78, dated 18.10.1979. Similarly, one Achanta Satyam filed another suit in O.S.No.409 of 1985 on the file of II Additional Senior Civil Judge, Visakapatnam against the Government and another for payment of compensation for the very same land in R.S.No.89/7 part and 89/8 part claiming ownership over the said land under a registered sale deed No.2220/65, dated 26.7.1965 and on the basis the order of Settlement Officer, Visakapatnam in S.R.No.11(a)/23/69, dated 24.6.1969.

It is not necessary to go into several contentions urged by the petitioner namely her entitlement to patta over the land in question etc. The learned counsel for the petitioner contends that that the first respondent cannot exercise suo moto powers after long lapse of time that too after granting the settlement patta in favour of the petitioner in the year 1970, which was affirmed by the Director of Settlement on 18.10.1979, and the suo moto power exercised by the first respondent was not within the reasonable period. Since both the suits, referred to above, were filed in the years 1985 and 1986 claiming ownership and possession over the said land based upon the pattas issued by the Settlement Officer in the years 1985 and 1986 and as the second respondent-District Collector was made a party in the suits, it necessitated him to report the matter to the first respondent on 22.5.1988. The suo moto enquiry conducted by the first respondent cannot be said to be after a long lapse of time for the reason that the fact of rival claims were made known to the second respondent only on receipt of summons from the Court in the said suits and he promptly acted within a reasonable period by referring the matter to the first respondent for conducting the suo moto enquiry.

Petitioner Eti Ammanamma (died) claimed that the lands in R.S.No.89/7 and R.S.No.90/2, correlated to old Sy.No.178 of Mindi Village, which were covered by old patta No.155, were held by her husband late Eti Appa Rao. Whereas, the claim of Achanta Satyam in O.S.No.409 of 1985 was that the lands in R.S.No.89/7 part and R.S.No.89/8 part, which were covered by old patta No.150, were held by Eti Ramayya from whom, Achanta Satyam purchased the said lands. Though the rival claims are overlapping with regard to R.S.No.89/7, the Settlement Officer granted ryotwari patta in favour of the petitioner in respect of land in R.S.NO.89/7 for an exent of Ac.1-43 cents in S.R.11(a)4/69-A, dated 30.4.1970 irrespective of the fact that with regard to the very same land, patta was already granted in favour of the vendor of Achanta Satyam through the proceedings of the Settlement Officer in S.R.No.11(a)23/69, dated 24.6.1969. After considering all these facts, the first respondent in his suo moto enquiry came to the conclusion that granting of patta in favour of the petitioner subsequent to the patta granted in favour of vendor of Achanta Satyam over the very same land by the Settlement Officer is without jurisdiction and accordingly, cancelled the patta granted in favour of the petitioner by giving detailed reasons in the impugned order, dated 29.12.1993.

The submission of the learned counsel for the petitioner is that when the notice was

received by the petitioner for his appearance on 29.12.1993 before the first respondent for enquiry, the counsel for the petitioner appeared and also filed a counter in response to the suo moto enquiry on the same day, but the said counter was not taken into consideration while passing the impugned order, which was eventually passed on the very same date. The records produced by the learned Government Pleader for Revenue discloses that the receipt of the counter filed by the petitioner in opposition of suo moto revision was on 29.12.1993; the draft order which was prepared and signed by the first respondent indicates the date as nil.1.1994, which was rounded off with pencil and mentioned the date as 29.12.1993. Likewise, the name of the first respondent and the date mentioned at the bottom of the order appears to be subsequently typed with different ribbon, but the order was communicated on 7.4.1994, which itself gives suspension that the order being passed subsequent to the filing of the counter, was with anti-date to that of the date of filing of the counter.

In that view of the matter, the impugned order passed by the first respondent is set aside and the matter is remitted to the first respondent. In view of the rival claims of petitioner as well as Achanta Satyam, the first respondent shall decide the issue whether or not Achanta Satyam was granted patta earlier to the petitioner in respect of land in Sy.No.89/7, correlated to old Sy.No.178 after considering the counter filed by the petitioner and pass appropriate orders within a period of three months from the date of receipt of a copy of this order. The parties shall appear before the first respondent with their respective advocates on 25.2.2006 with all necessary documents and substantiate their claims without there being any further notice from the first respondent and on the said date, the first respondent shall hear the arguments and proceed further in the matter in accordance with law. It is made clear that all the contentions are left open to the parties except the contention that the suo moto power exercised by the first respondent was barred by limitation, which has already been answered.

With the above observations and directions, the writ petition is disposed of. No costs.

A. GOPAL REDDY, J

07th FEBRUARY, 2006.

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